

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LAWRENCE BLITZ, Individually and on) Civil Action No. 3:11-cv-00992
Behalf of All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) Chief Judge Todd J. Campbell
AGFEED INDUSTRIES, INC., et al.,) Magistrate Judge E. Clifton Knowles
Defendants.)
)

KEVIN SOPUCH, Individually and on Behalf) Civil Action No. 3:11-cv-01025
of All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) Chief Judge Todd J. Campbell
AGFEED INDUSTRIES, INC., et al.,) Magistrate Judge E. Clifton Knowles
Defendants.)
)

[Additional captions appear on next page.]

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CONSOLIDATE AND
FOR SCHEDULING ORDER FILED BY DEFENDANTS AGFEED INDUSTRIES, INC.,
JOHN A. STADLER, GERARD DAIGNAULT, RAYMOND M. CESCA,
CLAY MARSHALL, AND EDWARD PAZDRO

LAWRENCE R. ROSEN, Individually and on) Civil Action No. 3:11-cv-01043
Behalf of All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) Judge John T. Nixon
AGFEED INDUSTRIES, INC., et al.,) Magistrate Judge John S. Bryant
Defendants.)
)

JUNE W. DOUGHERTY, Individually and on) Civil Action No. 3:11-cv-01046
Behalf of All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) Judge Kevin H. Sharp
AGFEED INDUSTRIES, INC., et al.,) Magistrate Judge John S. Bryant
Defendants.)
)

MICHAEL FAJEN, Individually and on Behalf) Civil Action No. 3:11-cv-01050
of All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) Chief Judge Todd J. Campbell
AGFEED INDUSTRIES, INC., et al.,) Magistrate Judge E. Clifton Knowles
Defendants.)
)

Defendants AgFeed Industries, Inc., John A. Stadler, Gerard Daignault, Raymond M. Cesca, Clay Marshall, and Edward Pazdro (collectively “Movants”), file this memorandum in support of their Motion to Consolidate and for Scheduling Order. Plaintiffs in the above-captioned actions have informed counsel for Movants that they do not oppose this Motion and have agreed to the [Proposed] Order Consolidating Related Actions (the “Proposed Order”) filed herewith.

To date, the following related five cases have been filed in this District: *Blitz v. AgFeed Industries, Inc., et al.*, Case No. 3:11-cv-0992; *Sopuch v. AgFeed Industries, Inc., et al.*, Case No. 3:11-cv-01025; *Rosen v. AgFeed Industries, Inc., et al.*, Case No. 3:11-cv-01043; *Dougherty v. AgFeed Industries, Inc., et al.*, Case No. 3:11-cv-01046; and *Fajen v. AgFeed Industries, Inc., et al.*, Case No. 3:11-cv-01050.

These actions concern identical or overlapping class periods and allegations, assert the very same claims under the Securities Exchange Act of 1934 (the “1934 Act”) against overlapping defendants, and otherwise are subject to consolidation under applicable securities laws and Federal Rule of Civil Procedure 42(a). As there is no discernable difference between the factual allegations and legal claims asserted in the above-captioned actions, these actions should be consolidated for pretrial and trial purposes.

Furthermore, given the fact that the actions should be consolidated, Movants should not be required to file an answer or other responsive pleading to the several complaints on a schedule which is different from each action. In the *Blitz* action, the Court has already entered an order which requires Defendants to file an answer or other responsive pleading sixty days after Plaintiff files an amended or consolidated complaint or designates the original complaint as the operative complaint in the *Blitz* matter following lead plaintiff appointment.

As such, Movants file the instant motion seeking consolidation and the entry of an order which relieves Defendants from the obligation of responding to the complaints filed in the above actions until sixty days after the appointed lead plaintiff files a consolidated amended complaint or designates a previously filed complaint as the operative complaint.

DISCUSSION

The above-captioned five actions arise out of the same facts and involve virtually all of the same parties and the same claims. The complaints each allege that Defendants violated Sections 10(b) and 20(a) of the 1934 Act as well as Rule 10b-5 promulgated thereunder, by among other things, making false statements in or omitting material information in AgFeed's public filings and statements.

The Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4, *et seq.* (the "PSLRA") contemplates a two-step process whereby consolidation of actions must be considered prior to the appointment of Lead Plaintiff:

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter . . . has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the [lead plaintiff] determination . . . until after the decision on the motion to consolidate is rendered.

15 U.S.C. § 78u-4(a)(3)(B)(ii); *see also In re American Serv. Group, Inc.*, 2006 U.S. Dist. LEXIS 61779, *6 (M.D. Tenn. Aug. 28, 2006) ("Once adequate notice is given, PSLRA describes a two-step process: consolidation of the various actions and appointment of the lead plaintiff."). Moreover, pursuant to Federal Rule of Civil Procedure 42(a), the Court may consolidate cases "involv[ing] common question[s] of law or fact." Fed. R. Civ. P. 42(a).

A trial court making a decision to consolidate must consider:

Whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Cantrell v. GAF Corp., 999 F.2d 1007, 1011 (6th Cir. 1993) (alteration in original) (quoting *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)).

In the present case, common questions of fact and law exist for consolidation purposes because all of the complaints arise out of the same subject matter and essentially assert the same causes of action. Thus, there is a risk of inconsistent adjudications if the cases proceed separately. The burden on the parties is lessened if the cases are consolidated because potential witnesses and relevant documents will be the same in all of the cases. Moreover, the expense to the parties, particularly Defendants, would be reduced in a single-trial proceeding as opposed to multiple trials.

CONCLUSION

Pursuant to Federal Rule of Civil Procedure 42(a), the PSLRA and the reasons set forth above, Movants respectfully request that the Court consolidate these cases and establish a schedule for the filing of a consolidated complaint after the appointment of Lead Plaintiff and Lead Plaintiff's counsel. Movants further request relief from the obligation of responding to the complaints filed in the actions until sixty days after the filing or designation of one or more consolidated or amended consolidated complaint(s) incorporating the allegations and claims set forth in the consolidated actions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2011, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following and/or served the following via U.S. Mail:

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